

**CITY OF COLLEGE STATION
COMMUNITY DEVELOPMENT OFFICE
FACADE IMPROVEMENT REHABILITATION AGREEMENT**

This Agreement is made and entered into by and between the **City of College Station, Texas**, a Texas Home-Rule Municipal Corporation (hereafter "the City"), and **Robert Forrest**, (hereafter "the Owner").

WHEREAS, the Owner has applied for financial assistance pursuant to the City's Facade Improvement Program (referred to herein as the "the City's Program" or the "Program"), undertaken by the City to improve certain commercial real property as determined by the City; and

WHEREAS, the Owner is eligible and has qualified for such Rehabilitation assistance under the Program;

WHEREAS, the City has determined that it is appropriate under the City's Program to provide assistance to the Owner as set forth herein in order to accomplish the rehabilitation of the Owner's commercial property.

NOW THEREFORE, the City and the Owner, for and in consideration of the covenants and agreements as set forth herein, do agree as follows:

TERMS AND CONDITIONS

1. The City shall provide financial assistance to the Owner in the form of a deferred payment, forgivable loan in an amount not to exceed the City's budgetary authority as set forth in the Program Guidelines, as amended, for the purpose of rehabilitating the Owner's commercial property located at **301 College Main** in College Station, Texas (hereinafter the "Property"), the legal description(s) of the Property being as follows:

Being all that certain tract or parcel of land lying and being situated in Brazos County, Texas, and being Lot Twenty-seven (27), Block Six (6) and Seven (7), W.C. Boyett Estate Partition, an addition to the City of College Station, Brazos County, Texas, according to plat recorded in volume 100, page 440, Deed Records of Brazos County, Texas.

2. The Owner will receive a deferred payment loan, potentially to be forgiven in full five (5) years from the date of "Project Completion" (defined in paragraph six herein). The loan's promissory note from the Owner to the City (the "Note") shall bear no interest on the principal outstanding balance, except in the event of default. The amount of the loan to be paid back shall

be reduced by twenty percent (20%) of the original amount for each full year after Project Completion provided that the Owner has: (1) fulfilled all requirements and obligations set forth herein; (2) complied with all provisions of the City's Facade Improvement Program Guidelines ("Program Guidelines" hereinafter, attached and incorporated for all purposes as **Exhibit A**); and (3) fulfilled all other provisions of the Note.

3. The Owner understands that the City's maximum budgetary authority for the rehabilitation of the Property is subject to the City's Program Guidelines and may not, under any circumstances, exceed **Two Hundred Thirty-eight Thousand Eight Hundred Thirty-eight and No/100 Dollars (\$238,838.00)** for this particular Property.

4. The Owner agrees and authorizes the rehabilitation work on the Property as described in the Bid Package and attached drawings and specifications—incorporated by reference thereto and on file with the City of College Station Community Development Department. Any other rehabilitation or other work agreed to by the Owner and the Contractor and undertaken without the City's approval shall be at the sole and entire expense of the Owner.

5. As set forth in the Program Guidelines, and the program guidelines and standards of the Texas Historical Commission, the United States Secretary of Interior Rehabilitation standards, and the guidelines promulgated by the Northgate Facade Improvement Program Advisory Committee, rehabilitation funds may only be used to rehabilitate the exterior facade of the Property. No interior improvements to the building will be eligible.

6. The City, having previously inspected the Property to determine the feasibility of rehabilitation, will review the work write-up and cost proposal, obtained by the Owner, to be used as the technical specifications of the bid document. After bid advertisement and acceptance of the bid proposal by the Owner, where appropriate, a "Standard Form of Construction Agreement for Community Development Projects Between Owner and Contractor" (hereafter the "Construction Contract") will be signed by the Owner with the selected contractor. The contractor must have been screened by the City for inclusion on its list of approved bidders for City-assisted Rehabilitation Projects. The City will monitor the progress, performance, and quality of work by the contractor through periodic on-site inspections until work is completed as specified in the Construction Contract and until Notice of Acceptance of Work is signed by the Owner (referred to for purposes of this Agreement as "Project Completion" hereinafter). The City will release the draws according to the payment schedule set forth in the Construction Contract and upon verification of value in place as the work progresses.

7. The City shall aid in the development of the rehabilitation proposal and cost negotiations with the contractor, maintain the photographic work needed for the write-up and documentation, carry out on-site inspections to monitor contractor performance and quality assurance, and process change orders for performance of additional or modified work activities, as required by the construction and approved by the Owner.

8. The Owner agrees that the City has no responsibility for any faulty or incomplete work of the construction contractor. The Owner also agrees that hidden or latent conditions not covered by the original inspection or bid package, including drawings and specifications, are not the fault of the City, nor is the City liable for such conditions.

9. The Owner agrees not to allow any changes or additions to the plans and specifications in the Construction Contract without written approval of a change order approved by the City.

10. In the event that the Owner wishes to terminate the Construction Contract with the contractor, the Owner must obtain concurrence of the City. The Owner understands and agrees that breach, including delays, of the Construction Contract by the Owner shall constitute grounds, pursuant to this Agreement, for the City to revoke its funding for this Project, and exercise its security interest in the Property for the purpose of recovering any City funding already disbursed.

11. As part of the consideration for providing financial assistance to rehabilitate the Property described herein, the Owner agrees that for at least five (5) years beginning on the date of Project Completion, (s)he shall make the Property available for commercial activity as specified herein and in accordance with the Program Guidelines.

12. For a period of five (5) years beginning on the date of Project Completion, the Owner agrees to comply with the City's Program requirements and procedures, including but not limited to those set forth herein and/or in Section 11 of the Program Guidelines, namely:

- (a) The Owner shall designate one person to be the "contact person" for this Project. The contact person shall be responsible for notifying all other persons of the time and dates for design meetings.
- (b) The Owner shall maintain the facade improvements at a similar or higher level of maintenance for a minimum of five (5) years. Modifications to facade improvements must conform to appropriate architectural designs and building exteriors must be maintained in accordance with City building and anti-neglect standards. *In addition, any subsequent leases during this five-year period will include language requiring any subsequent alteration to the facades to be in accordance with the design and review standards of the Facade Improvement Program.*
- (c) Owner agrees to immediately notify the City of any and all periods throughout the term of this Agreement after Project Completion during which the premises is not actually occupied as required pursuant to this Agreement. Owner shall not be held in default of this Agreement on the basis of any occupancy requirement set forth herein below for the first one hundred eighty (180) days beginning with date of Project Completion.
- (d) Buildings renovated under this Program must be occupied as specified herein below or be available for such occupancy by a tenant for a period of five (5) years

from the date of Project Completion. For purposes of this provision, "available" shall mean and include: (1) prepared for immediate possession; (2) connected to water and electrical services at all times for purposes of showing the premises to prospective tenants and maintenance; and, as to all unoccupied portion(s) of the premises, (3) reasonably marketed either by (i) listing for lease or rent with a licensed real estate broker, (ii) acquiring a leasing or rental advertisement in a newspaper of general circulation available in the City which shall be printed at least two days per week, (iii) posting signage at the premises clearly visible to passing vehicular traffic indicating that the premises is for lease or rent and contact information in compliance with City ordinances, or (iv) other marketing techniques indicating that the premises are or for lease or rent requested in writing by the Owner that may, in the sole discretion of the City's Community Development Administrator, be deemed sufficient to effectively market the premises and pre-approved in writing by said Administrator.

- (e) No portion of any loan forgiveness pursuant to this Agreement shall accrue for any portion of any period(s) exceeding ninety (90) days, inclusive, during which at least fifty percent (50%) of the total square footage within the premises is not continuously occupied by either the Owner and/or tenant(s) for the purpose of conducting commercial activity permitted by City zoning ordinances. Only one such ninety (90) day grace period shall be allowed each year commencing from the date of Project Completion. For purposes of this provision, "commercial activity" shall mean and include: (1) any type of business or activity which is carried on for a profit; and (2) activity relating to or connected with trade and traffic or commerce in general. "Commercial activity" shall not mean or include any land speculation or leasing activities concerning or regarding the Property or premises.
- (f) In the event the premises is not occupied as required by subparagraph (e) above, the Owner shall re-pay one sixtieth (1/60) of the Note, plus interest, for each month the premises is not so occupied for non-compliance with occupancy requirements. Such default is referred to as a "Special Default" in the Note. Such payments shall be payable on the first day following the above referenced ninety (90) day grace period for each such period, and on the last day of each month thereafter. Interest shall be calculated from commencement of any such periods. Such payments shall become immediately due upon termination of this Agreement or the date the Note would otherwise be finally forgiven, whichever shall first occur.
- (g) Failure to occupy the premises as required by subparagraph (e), above, for any periods, continuous or otherwise, exceeding one hundred eighty (180) days in any year period beginning after the first one hundred eighty (180) days from Project Completion, shall constitute grounds, pursuant to this Agreement, for the City to revoke its funding for this Project, and exercise its security interest in the Property

for the purpose of recovering any City funding already disbursed. Upon written request of the Owner and the written recommendation of the City's Community Development Administrator, the City may, in its sole discretion, grant such extensions as may serve the purposes of the City's Facade Improvement Program. No such extension shall be construed as a waiver of any rights held by the City pursuant to these provisions, but shall simply postpone the exercise of such rights through the extension period(s) in the event that the breach is not remedied within the extension period(s).

- (h) All projects utilizing funds subject to Davis-Bacon Federal Wage Standards regulations that are in excess of \$2,000.00 must comply with the Davis-Bacon Act, which provides for payment of prevailing wages to persons employed on a federally funded construction/rehabilitation project.
- (i) All funded projects must maintain adequate hazard insurance for a period of five (5) years following Project Completion. This requirement may be waived in writing by the City's Community Development Administrator upon recommendation of the Facade Improvement Program's Advisory Committee for proposed projects that address health and safety issues.
- (j) The Owner shall be responsible for all costs in excess of approved loan funds. Any contingency work will be authorized in writing by the City's Community Development Administrator and the Owner prior to implementation.
- (k) Bids for the construction work will be solicited only from contractors included in the City's Community Development Facade Improvement Program Qualified Contractors List.
- (l) The City will administer, as the Owner's agent, the bidding process, the supervision of the construction, the release of progress payments, and provide the form of the Construction Contract.

13. The Owner further agrees to comply with all other applicable local, State, and Federal laws, ordinances, regulations, and policies, including without limitation those set forth below.

- (a) All applicable City building and property maintenance codes and ordinances.
- (b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; Executive Order No. 11063, as amended by E.O. 12249; and 24 C.F.R. § 107. The Owner agrees that he/she will comply with all prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975, 42 U.S.C. § 1601 et. seq., and all prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, Section 502 of the Rehabilitation Act of 1973, 29 U.S.C. § 792; and

- (c) The Owner agrees to abide by the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower-income persons residing within the locality of the metropolitan area in which the Project is located, and contracts for work in connection with the Project be awarded to business concerns that are located in, or owned in substantial part by, persons residing in the same metropolitan area as the Project.
- (d) The Owner agrees that, to the extent possible, he/she will encourage the use of minority and women's business enterprises in connection with activities funded in whole or in part by the rehabilitation loan.
- (e) As provided in the Construction Contract form, and in the case of Projects subject to Davis-Bacon wage rate requirements, the Owner agrees to pay wages to mechanics and laborers employed in the rehabilitation of the Project at rates not less than those prevailing on similar rehabilitation in the locality, if such rate category exists, or the appropriate rate as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. §§ 176a-276a-5.
- (f) Additionally, laborers and mechanics on such Projects are subject to provisions, as applicable, of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-333.
- (g) The Owner agrees to comply with policies, guidelines and requirements of OMB Circulars A-102, Revised, and A-122, as they relate to the acceptance and use of Rehabilitation financial assistance.
- (h) As applicable to rehabilitation of privately owned rental properties, the Owner agrees to comply with the policies and procedures related to the elimination of architectural barriers to the access of handicapped persons under the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151-4157.
- (i) For any property rehabilitated under this Agreement that lies within the 100 year flood plain, the Owner agrees to purchase Federal Flood Insurance as required under the Flood Plain Protection Act of 1973, 42 U.S.C. § 4001 et seq.
- (j) The Owner agrees to comply with the policies and procedures relating to removal and non-use of lead-based paints in accordance with the Lead-Based Paint Poisoning Prevention Safety Act, 42 U.S.C. §§ 4821-4846, and the federal regulations that implement that Act, 27 C.F.R. § 35.

- (k) The Owner agrees to comply with the provisions of 24 C.F.R. § 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement on ineligibility status.

14. The Owner agrees to provide all insurance necessary for the protection of the Project, including the full value of any improvements anticipated as a result of the rehabilitation of the Property.

15. In consideration of the rehabilitation improvements of the Owner's Property as described above, and only to the extent of \$2 million in the aggregate, \$1 million per occurrence, the Owner agrees to and shall indemnify and hold harmless the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, or for breach of contract arising out of or in connection with the rehabilitation work done by a contractor or the City under this Agreement. Such indemnity shall apply regardless of whether such injuries, death, damages, or breach is caused in part by the negligence of the City.

16. The Owner assumes full responsibility for the work to be performed under this Agreement, and to the extent of \$2 million in the aggregate, \$1 million per occurrence, the Owner hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether the Owner, employees of either of the parties hereto, or other third parties) and any loss of or damage to property (whether property of either of the parties, their employees, or other third parties) that is caused by, alleged to be caused by, arising out of, or in connection with the rehabilitation work to be performed under this Agreement. This release shall apply regardless of whether said claims, demands, and causes of action are covered in whole or in part by insurance and regardless of whether said injury, death, loss, or damage is caused in part by the negligence of the City.

17. This Agreement and the Owner's rights, duties, and obligations hereunder may not be assigned, sold, or transferred in any way--other than by operation of probate or other transfer contingent upon the death of the Owner--without the prior written approval of the City, which may be withheld in the sole discretion of the City. In the event that the Owner in any way transfers the Property--other than by operation of probate or other transfer contingent upon the death of the Owner--without obtaining the prior written approval of the City, payment of the full amount of the Note shall be immediately due and payable, less twenty percent (20%) for each full year after completion of the rehabilitation that the Owner has not defaulted upon any of the other provisions of this Agreement, the Note, the Deed of Trust, and the guidelines and rules and regulations of the City's Facade Improvement Program as amended.

18. The City's loan to the Owner under the Program is contingent upon the Owner's provision of matching funds for the completion of the Project. The Owner hereby agrees to provide said matching funds and to place said funds in an escrow account prior to the commencement of construction on the Project.

19. Waiver of any breach under this Agreement does not constitute a waiver of other breaches.

20. This Agreement constitutes the entire agreement between the parties. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the parties other than what are set forth or described herein. The parties further agree that this Agreement shall be interpreted under the laws of the State of Texas and that exclusive venue for all matters pertaining to the performance or interpretation of this Agreement shall be in Brazos County, Texas.

21. The words "the Owner" and "the City" and all personal pronouns or relative words used in this Agreement with reference to the parties shall apply regardless of number or gender.

ROBERT FORREST

CITY OF COLLEGE STATION, TEXAS

BY: _____

Printed Name: _____

Title: _____

Date: _____

BY: _____

LYNN McILHANEY, Mayor

Date: _____

APPROVED:

THOMAS E. BRYMER, City Manager

Date: _____



City Attorney

Date: 6-22-01

CHARLES CRYAN, Director of Fiscal Services

Date: _____

Randy Brumley, Community
Development Administrator

Date: _____

STATE OF TEXAS §
 § **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the _____ day of _____, 2001, by Lynn McIlhaney, Mayor of the **City of College Station**, a Texas home-rule municipality, on behalf of said municipality.

Notary Public in and for
the State of Texas

STATE OF TEXAS §
 § **ACKNOWLEDGMENT**
COUNTY OF BRAZOS §

This instrument was acknowledged before me on the _____ day of _____, 2001, by **Robert Forrest**, as **Owner**.

Notary Public in and for
the State of Texas

EXHIBIT "A"

**City of College Station
Façade Improvement Program
Program Guidelines**

CITY OF COLLEGE STATION FACADE IMPROVEMENT PROGRAM PROGRAM GUIDELINES

Unless herein stated otherwise, general operating procedures contained in the Community Development General Administrative Guidelines will be followed.

1. GOALS AND STATEMENTS OF PURPOSE:

The goals of the City of College Station Facade Improvement Program (FIP) are:

- to restore and preserve the historical integrity and character of certain targeted areas within the City limits of College Station (see attached map for Council approved eligible areas) and certain identified blighted commercial structures; and
- to maintain or increase the economic vitality of these eligible areas and properties.

2. OBJECTIVES:

In many ways, commercial development helps to define the character of our City. With this in mind, the City of College Station has developed this program to actively revitalize declining commercial areas and eliminate random sites of slum and blight within the City. The primary objectives of this program are as follows:

- to create public-private partnerships between the City of College Station and Merchants/Property Owners through offering economic incentives for the renovation, restoration, and preservation of commercial building exterior facades and the correction of code violations;
- to stimulate economic development and redevelopment, thereby increasing sales tax revenues and property values;
- to ensure the survival of the areas' architectural and cultural history; and
- to eliminate slum and blighting conditions in the eligible areas and as they exist throughout the City through the correction of building code and Property Maintenance Regulations¹ (anti-neglect) violations.

Measurable accomplishments will be monitored by determining the amount of private funds made available for reinvestment, the number of code violations eliminated and increases in property values. Intangible results will be documented through the obvious aesthetic improvements to the buildings' exterior and the revitalization of the area.

3. PROGRAM ADMINISTRATION:

¹Property Maintenance Regulations - Section 5 of Chapter 3 of the City Code of Ordinances

The Facade Improvement Program will be operated in accordance with all applicable rules and regulations of the City of College Station, the State of Texas, and the U.S. Department of Housing and Urban Development (HUD) depending on the type of funding utilized. Additionally, regulations that set forth requirements for meeting the National Objectives for the use of Community Development Block Grant funds (CDBG) will determine and may affect the amount of assistance available and the scope of work to be approved.

Administrative procedures used to implement the program will be revised and modified to meet any changes made to such rules and regulations of the above entities which may occur over time. In the event of a conflict between these guidelines and regulatory requirements of the funding source, the requirements of the funding source shall take precedence.

Administrative authority for operation of the program will rest with the Office of City Manager, which will have the authority to execute documents necessary for project initiation and completion. The Community Development Office will serve as the approving office for administrative procedures and processes, program eligibility, contract negotiation, and any required change orders to the contract. The Community Development Administrator will have direct responsibility for the daily administration of the program, including waiving of certain program administrative processes and requirements in order to achieve the Council-approved Goals and Objectives.

A seven member Facade Improvement Program Advisory Committee (Committee) appointed by the City Council will assist in the implementation of the program. The Committee's voting membership shall consist of:

- Position 1: Local registered architect
- Positions 2 & 3: Merchants/property owners of commercial businesses/properties in College Station
- Position 4: City Engineer, or designee
- Position 5: City Planner, or designee
- Position 6: Community Development Administrator, or designee
- Position 7: Chairperson of the City's Historical Preservation Committee, or designee

The Committee's initial terms of office shall be three years for the architect and two years for the merchants and/or property owners. All terms thereafter shall be for three years. City staff positions and the Chairperson of the City's Historical Preservation Committee, or designee, will be permanent positions. The Committee will elect a Chairperson from their membership on an annual basis.

4. ADVISORY COMMITTEE DUTIES:

The Committee's duties will include:

- a) The establishment and review of Facade Improvement Program rehabilitation and design standards
- b) The periodic re-examination of the Facade Improvement Program's program guidelines and the development of recommendations to the City Council;

- c) The review and recommendation to the City Council for the designation of eligible areas;
- d) The review of eligible applications for proposed projects and the recommendation to the City Council for approval of such projects (Note: The Committee, based on relevant information, may choose not to recommend a project for funding);
- e) When necessary, due to funding limitations, the ranking or prioritizing of projects based on, but not limited to, the consideration of visibility, safety, relative worth of the project to the amount of funding requested, and relative contribution of the project to the revitalization of an eligible area;
- f) The determination of the amount of program funds to be made available to the proposed project, based on, but not limited to, the consideration of the historical significance of the structure, the time and date of application, the significance of the project to the revitalization of an eligible area, safety, the readiness of the project to proceed, the financial stability of the applicant, and the type, value, and visibility of the applicant's proposed matching contributions;
- g) The Committee, while reviewing applications, shall consider: the City's land use and development codes; relevant studies to the eligible area (i.e., Northgate Revitalization and Redevelopment Study); relevant development guidelines (i.e., Northgate Development Guidelines); and applicable standards or policies within the City's Zoning Ordinance;
- h) In the absence of other local design review or oversight requirements, the Committee may also review and make recommendation regarding the following factors: exterior space utilization; attractiveness; material selection; harmony and compatibility; vehicular and pedestrian circulation; maintenance aspects of the proposed improvements; and,
- i) The Committee may make recommendation to the Community Development Office regarding the implementation and completion of proposed projects.

5. PROGRAM DESCRIPTION:

The City of College Station, utilizing CDBG funding and other funds that may become available, will provide a deferred, forgivable loan to eligible property owners or merchants to make specifically defined improvements to eligible commercial buildings. Eligible property owners/merchants will receive a deferred payment loan in the amount of the City's contribution, potentially to be forgiven in full five (5) years from the date of the loan's promissory note from the property owner/merchant to the City ("the Note"). The loan shall bear no interest on the principal outstanding balance. For projects with total project costs of \$25,000 or more, the Note shall be secured by a lien against the subject property, or other property as allowed by these program guidelines and approved by Community Development staff. The City will typically require first lien position, but will consider a lesser position on a case-by-case basis. In that event, the estimated post-construction value is required to demonstrate value adequate to satisfy liens against the property. Provided that the property owner/merchant has in good faith attempted to fulfill provisions of the Note and complied with all provisions of the City's Facade Improvement Program Guidelines, the amount of the loan to be paid back shall be reduced by twenty percent (20%) of the original amount for each full year of compliance from the Real Estate Lien Note

execution date . Provided further that if the property owner/merchant complies with all such provisions for the entire five (5) years term of the Note and more than four (4) years have elapsed since the completion of the rehabilitation, then the entire amount of the Note shall be forgiven.

If the property is sold within the five (5) year loan period, the loan shall become due on the closing date of the sale. In the event of non-payment by the property owner at that time, interest shall accrue on the matured, remaining balance at the rate of ten percent (10%) per annum. However, upon approval of the City and on positive recommendation of the Committee, the remaining loan and lien requirements may be transferable to an appropriate purchaser of the property. In situations where the applicant is a tenant in the subject property, the Committee will require a lease be in place for the duration of the City's lien period. In the instance of an application by a tenant, the property owner shall be a necessary party to the application. A tenant will be required to provide the lease as evidence of eligibility under this program and proof that the tenant may undertake the desired improvements.

Additionally, if it is determined by City staff, that it is impractical to place a lien on the subject structure, then other forms of security may be approved by City staff. The collateral to which a lien may be attached includes, but is not limited to, liens on other non-community real, personal, or business property. In situations where community property is used for collateral, all owners will be required to agree to and sign the lien, however in no circumstances shall a homestead be used as collateral. The applicant must provide evidence that the property to be encumbered is not exempt, not currently encumbered, and has title insurance, where appropriate. Liens will not be required for projects with total project costs of less than \$25,000.

If, within 2 years from completion of an earlier project, a subsequent application is received from the same applicant for the same property, the following applies. The total City contribution for both the earlier project and pending project will be combined to arrive at a lien amount for the additional work. The match requirements however, will be based only on the new project costs. The term for the new and adjusted lien amount will be based on the most recent project application. If the combined project amounts are less than \$25,000, a lien against the property will not be required.

In exchange for the loan, the property owner and/or merchant will be required to provide at a minimum, matching funds in the amount of \$3,000 in order to receive FIP funds. In exchange, the City may provide up to \$15,000 for other eligible project costs. For eligible project expenses in excess of \$18,000 the City may provide matching "dollar-for-dollar" funding up to a total eligible project cost of \$25,000. Finally, for total eligible project costs in excess of \$25,000 the City may provide additional match funding on a 70/30 match formula, where the City provides \$7 of every \$10 in eligible project costs. The Committee will, based on various information including but not limited to funds available, improvements proposed, type of business, private funds committed, historic significance, amount of eligible costs, location and importance of the property etc.) establish a recommended funding level to be forwarded to City Council. City Council will approve, deny or modify the recommended funding level.

The following example demonstrates funding possibilities for a project with \$100,000 of eligible improvements. Note that any ineligible or non-funded improvements are the responsibility of the applicant:

Private Investment Required	City Investment Available	Total Eligible Project Costs
\$3,000	\$15,000	\$18,000
\$3,500	\$3,500	\$25,000
\$22,500	\$52,500	\$75,000
Totals \$29,000	\$71,000	\$100,000

The total funds available in this program at any given time may restrict the City's ability to meet a particular loan request. Applications for buildings with the highest significance rating as determined by the Committee in accordance with Section 4 of these guidelines may be processed first. Otherwise, applications which have provided all requested information shall be processed on a first-come, first-served basis with first-time applicants having priority.

6. ELIGIBLE AREAS:

Funds will be made available only to commercial properties located within eligible and identified redevelopment areas or to certain structures determined by City staff to be in a slum or blighted condition.

- a) Eligible redevelopment areas are those areas defined by the City Council as being "blighted areas". A "blighted area" is defined by its substantial number of substandard, deteriorating, or deteriorated structures that impairs or arrests the sound growth of the City or constitutes an economic or social liability and/or menace to the public health, safety, or welfare in its present condition or use; and due to the number of vacant buildings and existence of violations of Building and Property Maintenance Regulations. Other areas in the City will be reviewed as needed for eligibility. In addition, funds may annually be targeted by the Committee to certain "priority areas" within an eligible area in order to maximize the effectiveness and efficiency of the program. See attached map for Council approved eligible redevelopment areas.

Eligible improvements to structures located in redevelopment areas will be subject to the requirements included in HUD's Area Slum and Blight Benefit National Objective. Generally, these requirements restrict eligible improvements to include exterior renovations and the correction of interior code violations.

- b) Certain commercial structures located outside of an eligible redevelopment area may be determined eligible if the structure is determined by City staff to be in a blighted condition. Eligible improvements will be subject to the requirements included in HUD's Spot Slum and Blight National Objective. Generally, these requirements restrict eligible improvements to be those that eliminate specific conditions of blight or decay that are detrimental to public health and safety.

7. APPLICATION PROCESS:

- a) Applications will initially be reviewed for program and funding eligibility by Community Development staff. Staff will review relevant documentation in order to complete a due diligence financial review and establish ownership.

- b) Eligible applicants will be forwarded with accompanying staff recommendation regarding funding and program priorities to the Committee, and to any other City boards or committees as appropriate.
- c) The Committee will review for project design and feasibility and will make determination as to the eligibility of proposed improvements.
- d) Projects will then proceed through the procurement/bidding process. Staff and Committee will review bids and a determination will be made as to the maximum allowable assistance available based on the eligible improvements and other factors as noted in these guidelines.
- e) Staff will develop program documents to award the assistance and forward the Committee's recommendation to City Council for final approval.
- f) Applicants will escrow the minimum required match funding with the City, final document execution will take place, and a Notice to Proceed will be issued to the Contractor.

8. APPLICATION / PROGRAM ELIGIBILITY REQUIREMENTS:

- a) The building must be occupied or available to a commercial tenant and located in the eligible areas shown on the attached map or be a designated slum and blighted structure as determined by City staff. New building construction is not eligible.
- b) All buildings will be reviewed for historical significance and referred as needed for review by the Texas Historical Commission.
- c) Eligible applicants include both the owner(s) of a business (merchant) located in an eligible building and the property owner(s). The applicants must provide documentation of ownership for the structure at the time of application. Additionally, the City will complete a title search to verify ownership. The application must be signed by all parties (property owner(s) and/or merchant(s) involved in the project. Should the property owner(s) or merchant(s) designate an alternate representative, appropriate documentation will be required.
- d) Applicants are to designate one person who will be the applicant's contact person for the project. The contact person notifies all other persons of the time and date for design and review meetings.
- e) A site plan reflecting property lines, the structure relative to those property lines, and other amenities (i.e., sidewalks, walkways, out buildings) will be required.
- f) Applicants must verify that there are no tax liens or judgment liens, active against the property. In the event of delinquent property taxes the property owner must submit a payment agreement approved by the taxing authority and the City and demonstrate an acceptable payment history for 6 months prior to project approval. A "due diligence" financial review will be conducted by staff to ensure that the applicant is not subject to bankruptcy or foreclosure. Staff shall review documentation demonstrating financial stability and the ability to comply with program requirements. Applicant shall provide a sworn statement that they are

not in bankruptcy, about to enter bankruptcy, and that they are current on all indebtedness that does, or could negatively affect the value or ownership of the property or business.

- g) Funds may not be approved for work which is in progress or has been previously completed. However, work that is initiated and completed after review and approval may be considered for match*
- i) All appropriate City permits and committee reviews and approvals must be obtained prior to the beginning of the façade improvements.
- j) Per Texas Department of Health (TDH) regulations, all public or commercial buildings must undergo asbestos surveys/inspections prior to being considered for program approval. If asbestos is present, abatement must be performed in accordance with TDH requirements (Note: this is a requirement for renovation to any commercial/public building regardless of participation in this or other municipal programs).
- k) All applicable Texas Accessibility Standards (TAS) and federal Americans With Disability Act (ADA) required standards will apply to FIP projects. The owner and / architect will be required to demonstrate that the required notices to the state and / or federal agencies and appropriate design standards are incorporated.
- l) Projects must be reviewed and approved and the required contract and lien documents executed before City-funded renovation work may begin.
- m) Prior to project approval, all proposed projects will undergo an environmental review conducted by Community Development staff. Conditions identified in this review may require remediation and will be reviewed for eligibility for grant funds.
- n) Any expenditures which exceed the approved loan amounts shall be the sole responsibility of the applicant(s). The City will notify the applicant(s) in writing of the approximate loan amount available, based on preliminary cost estimates provided by the applicant and/or developed by City staff. The applicant will then submit to the City documentation showing availability and commitment of matching funds prior to the project receiving final approval from the Committee.
- o) The minimum required owner match funding will be deposited with the City prior to project commencement to be escrowed in the project account. The applicant will first remit payments on construction draw requests, and then request reimbursements from the City.

9. IMPROVEMENTS ELIGIBLE FOR LOAN FUNDS:

All eligible improvements must be approved by the Community Development Office and the Committee, and be in compliance with all City and State code requirements. All existing exterior code violations located along the main facades of the building must be corrected and will receive first priority in reference to eligible loan expenditures. The following items are eligible expenses for loan funding:

- a) Exterior facade treatment systems (i.e., painting, murals, siding, bricking, EFS systems) for the building.

- b) Repair, replacement or installation of exterior doors, windows and trim work.
- c) The repair, replacement, or installation of awnings on the structure, excluding the cost of any temporary or permanent lettering, logo, signage, or “advertising”.. Permanently installed awnings that merely provide brackets or support for signs are eligible.
- d) Exterior brick or tile repair or replacement.
- e) The installation of interior display window lighting that is visible to the exterior and contributes to the exterior façade appearance. Illuminated hanging signs in the display window will not be eligible for funding.
- f) Exterior brick paving sidewalks or other committee approved walkway treatments adjacent to the building.
- g) Structural improvements to the building facades.
- h) Electrical or lighting improvements made to the building facades.
- i) Any permanent exterior building improvement which specifically provides better or enhanced access/egress for handicapped citizens and meets federal ADA dimensions and standards, including ramps, railing and sidewalks
- j) The removal or abatement of any hazardous material or substance from the building as outlined and specified by the Texas Department of Public Health, EPA, HUD, or TXDOT.
- k) Other items determined eligible for CDBG funding by City staff and the Committee.
- l) Architectural costs related to the development and monitoring of an approved scope of work. Generally, costs will not exceed 10% of the total project cost. These expenses are only eligible for reimbursement upon completion of the project. The Committee may consider architectural costs in excess of 10% on a case-by-case basis.

10. IMPROVEMENTS ELIGIBLE FOR MATCHING FUNDS:

All improvements must be approved for eligibility by the Community Development Office and the Committee and be in compliance with all City and State code requirements. Only permanent building improvements will be considered for eligibility. Code violations must be corrected first and will receive first priority status as eligible match.

The following items are not eligible expenses for the matching funds provided by the owner or business owner:
(1) Satellite, audio or video equipment, and computer systems. The Advisory Committee will make the final determination as to the eligibility of matching improvements.

11. PROGRAM REQUIREMENTS:

All improvements must be reviewed for compliance with applicable local, state, and federal requirements and approved in advance by the City's Community Development and Planning Divisions.

- a) Applicant agrees to maintain improvements at a similar or higher level/quality for a minimum of five years. Applicants who are not the property owners are required to maintain improvements for the term of their lease or five years, whichever is less. Modifications to facade improvements must conform to appropriate architectural designs and building exteriors must be maintained in accordance with City building and anti-neglect standards. *In addition, any subsequent leases executed during this five year period will include language requiring any subsequent alteration to facades be in accordance with the design and review standards of the Facade Improvement Program.*
- b) Buildings renovated under this program must be occupied by commercial tenants or be available for commercial occupancy for a period of five years.
- c) All projects utilizing funds subject to Davis-Bacon Federal Wage Standards regulations in excess of \$2,000 must comply with The Davis-Bacon Act, which provides for payment of prevailing wages to persons employed on a federally funded construction/rehabilitation project.
- d) All funded projects must maintain adequate hazard insurance for a period of five years following project completion. This requirement may be waived upon recommendation of City staff for proposed projects that address health and safety issues.
- e) The applicant will be responsible for all costs in excess of approved grant funds. Any contingency work or change orders will be authorized by the Community Development Office and program participant *prior* to implementation. Failure to comply with this requirement may result in a stop work order and/or unreimbursed expenses.
- f) All bidding procedures and contractor selection will be subject to local, state, and federal procedures. Every effort will be made to award bids in groups in order to increase program efficiency.
- g) Generally, bids will be solicited only from contractors included in the City's Community Development Facade Improvement Program Qualified Contractors List. This list will be presented to each applicant for review. Applicants will have the opportunity to refer any contractor of their choice to the City for determination of inclusion on this list.
- h) Work for funded projects must begin and be completed within a reasonable time-frame established by the City and/or committee.
- i) Generally, the City will administer, as the applicant's agent, the bidding process, the supervision of the construction, the release of progress payments, and provide the form of construction contract. Dependent on the terms of the Contract, the City may approve and accept the construction work on behalf of the Property Owner/Merchant.

12. APPEALS PROCESS:

The approval for the eligibility of receipt of federal funding per regulatory compliance shall rest solely with the Community Development Office.

Appeals from decisions of the Committee shall be to the Planning and Zoning Commission and this decision shall be binding. Applicants appealing must do so in writing and within ten (10) days of the Advisory Committee's decision. Appeals shall be submitted to the Community Development Office. A representative from the Community Development Office shall schedule a hearing of the appeal before the Planning and Zoning Commission within thirty (30) days from receipt of the letter of appeal.

13. SPECIAL CONSIDERATIONS:

- a) If the proposed building will undergo changes that alter historically significant features , the changes must be reviewed and approved by the appropriate state or local entity before the project can be funded. The Secretary of the Interior's Standards for Rehabilitation will be utilized for all projects determined historically significant by the Texas Historical Commission. In the absence of other regulatory boards or committees, staff and Committee will make recommendations on improvements to structures with local historical significance..
- b) *The Committee will retain the right to waive program requirements in order to facilitate the program's Council-approved goals and objectives.*
- c) *The Community Development Administrator will retain the right to waive program processes and procedures in order to facilitate the program's Council-approved goals and objectives.*